



U.S. Department of Justice

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BY E-MAIL

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Re: United States v. Troy Kelley, No. CR15-5198RBL (W.D. Wash.)

Dear Counsel:

We are writing to request information about Exhibit A-529, which purports to be an e-mail exchange between Julie Yates and your client, Troy Kelley, in early 2004. As far as we can tell, the document is not a document produced by the government in discovery. Assuming that is correct, we have serious concerns about your failure previously to produce the document. We request that you explain your failure to do so, and, further, that you provide information about the source of the document.

In April 2015, we requested, pursuant to Federal Rule of Criminal Procedure 16(b)(1)(A), all documents and other objects that the defense intended to introduce into evidence in its case-in-chief. The fact you chose to introduce Exhibit A-529 on cross-examination of Julie Yates is irrelevant. Whether evidence is introduced as part of a case-in-chief depends upon the purpose for the evidence's introduction, not the timing of that introduction. Evidence is part of the defense's case-in-chief when it is introduced to challenge the substance of the government's case, as opposed to merely impeaching a witness. *See, e.g., United States v. Aiyaswamy*, No. 15-CR-00568-LHK-1, 2017 U.S. Dist. LEXIS 57751 (N.D. Ca. Apr. 14, 2017) (and cases cited therein). Exhibit A-529 is substantive evidence, and you had an obligation to disclose it in advance of trial.

In addition, Exhibit A-529 appears to be a partial version of what may be a longer document, given the large volume of blank space at its top, and the apparent lack of signature or signature block on the bottom e-mail. Rule 16(b)(1)(A) entitles us to inspect and/or copy this document. Accordingly, please inform us of (a) the source of this document; (b) the date of, and circumstances surrounding, its discovery; and (c) the identity of the person(s) involved in its discovery. In addition, please make the original version of the document, whether that is in electronic or paper form, available for our inspection. Given that trial will resume on Monday, we ask that you provide this information by tomorrow.

Finally, you have an ongoing obligation to disclose any additional documents and other objects currently in your possession that you intend to introduce for substantive purposes, whether on cross examination of government witnesses or in your own presentation. Please produce any additional such documents that you intend to introduce immediately. Please be advised that the government will object to the introduction of any further documents that should have been disclosed, and that are not disclosed to us by tomorrow.

In the event that you fail to comply with these requests, we expect to raise these matters with the Court.

Sincerely,

ANNETTE L. HAYES
United States Attorney

s/Andrew C. Friedman

ANDREW C. FRIEDMAN
Assistant United States Attorney

s/Arlen R. Storm

ARLEN R. STORM
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s/Seth Wilkinson

SETH WILKINSON
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